

PRE-ISSUANCE DRAFT

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2015-0522
IN THE MATTER OF**

BRENT ALAN VANDERKAM

**ASSESSOR PARCEL NUMBER 099-120-035-000
SHASTA COUNTY**

This Administrative Civil Liability Complaint is issued to Brent Alan Vanderkam (hereafter referred to as Discharger) pursuant to California Water Code section 13385, which authorizes the imposition of Administrative Civil Liability, and Water Code section 13323, which authorized the Assistant Executive Officer to issue this Complaint. This Complaint is based on evidence that the Dischargers violated Water Code section 13376, federal Clean Water Act Section 301 and prohibitions established in *The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan), and seeks administrative civil liabilities pursuant to Water Code section 13385.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board ("Central Valley Water Board" or "Board") hereby finds the following:

BACKGROUND

1. On 24 February 2014, the Discharger purchased property located at 11550 Buggy Road, Shasta County, Assessor Parcel Number (APN) 099-120-035-000 (hereafter referred to as the Site). The Discharger or his lessee developed the Site to support a large scale marijuana growing operation. As owner of the Site, the Discharger is ultimately responsible for the condition of the property and discharges of wastes emanating from the property. The Discharger asserts that he leased the property to a third party but has been unwilling to identify that third party.
2. The natural topography of the Site consists of gently sloping terrain sustaining seasonal wetlands and ephemeral swales. The soils on Site are classified as Toomes very stony loam, which are described as well-drained soils with moderate runoff and moderate to high erosion potential. The Site intersects and discharges to an unnamed ephemeral tributary to Clover Creek, a Class I anadromous tributary of Cow Creek, and thence the Sacramento River (Unnamed Tributary).
3. According to California Department of Fish and Wildlife (CDFW) interviews with neighboring landowners, in April or May of 2014, grading and excavation operations commenced on Site, lasting approximately four days. The completed excavation and grading disturbed approximately 2.24 acres adjacent to and within the Unnamed Tributary.
4. On 17 November 2014, Central Valley Water Board staff (hereafter referred to as "Staff") received a declaration from CDFW Warden Steven Crowl including aerial photographs from a 5 November 2014 overflight of the Site. The photographs depicted a large scale marijuana growing operation on a graded/excavated area adjacent to and within the Unnamed Tributary. The declaration addressed the Site's threat to water quality due to lack of erosion control efforts as well as the potential for direct impact from spoils placed

within the Unnamed Tributary. Both Warden Crowl and Staff confirmed with Shasta County Building Division that no grading permits had been issued for the Site. Further investigation by Staff indicated that no permits had been issued by CDFW for a Lake and Streambed Alteration Agreement, Army Corps of Engineers (ACOE) for a section 404 permit, nor the Central Valley Water Board for either a 401 Water Quality Certification or National Pollutant Discharge Elimination System (NPDES) permit.

5. On 20 November 2014, CDFW along with Shasta County Marijuana Investigations Team (MIT) investigated a residence at the Site and discovered evidence of a large-scale marijuana processing operation.
6. On 20 November 2014, Staff obtained an inspection warrant (Warrant) from Shasta County Superior Court granting access to the Site to conduct an inspection.
7. On 21 November 2014, Staff conducted an inspection of the Site in accordance with the Warrant issued on 20 November 2014. A copy of the inspection report and signed Warrant is included as Attachment C to this Complaint.
8. On 10 March 2015, Central Valley Water Board Staff served an investigative subpoena and special interrogatories to the Discharger and the Discharger's agents requesting documents and information relating to the lease of the property located at 11550 Buggy Road. Response was requested by 23 March 2015 to obtain information in Discharger's sole possession and control that could identify additional responsible parties. The subpoena was received by the Discharger and his attorney on March 14 and March 12, respectively. At the time of issuance of this Complaint, the Discharger has failed to comply or respond in any manner to the investigative subpoena and interrogatories.

SITE INSPECTION OBSERVATIONS

9. **21 November 2014 Inspection.** On 21 November 2014 Staff inspected the Site in accordance with the 20 November 2014 Warrant.
10. Based on precipitation data from a Department of Water Resources/Flood Management gauging station (WHT CalFire Station; Latitude 40.6194; Longitude -121.8994) located approximately 5.8 miles west of the Site, the area received 0.38 inches of rainfall in the 24 hour preceding the 21 November 2014 inspection.
11. During the 21 November 2014 inspection, Staff discovered a large graded area adjacent to and within the Unnamed Tributary. Using a Garmin Rino 655t GPS (Garmin), Staff walked the perimeter of the disturbed soils. The Garmin calculated approximately 2.24 acres of disturbed land at the Site. The disturbed area included approximately 68 linear yards of disturbed streambed within the Unnamed Tributary as estimated by Staff using ArcGIS. The graded area was flanked to the west and south by two large berms of spoils from the excavation. Staff calculated an estimated 7,035 cubic yards of native soil comprising the two large earthen berms, all of which lacked erosion control measures. Of the 7,035 cubic yards of spoils, Staff observed that approximately 427 cubic yards had been placed directly within the Unnamed Tributary rerouting the stream's natural flow.

12. During the 21 November 2014 inspection, Staff documented turbid plumes and discharge of sediment-laden storm water from disturbed surfaces discharging from the Site to the Unnamed Tributary. Turbidity measurements collected downstream from the Site exceed Basin Plan objectives for turbidity increases where natural turbidity upstream is measured between 1 and 5 NTUs. The Basin Plan states that where natural turbidity is between 1 and 5NTUs, increases shall not exceed 1NTU. Field turbidity measurements downstream of the discharge exceeded background (ambient or upstream) measurements by nearly 30 NTUs.

BENEFICIAL USES OF RECEIVING WATERS

13. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
14. Surface water from the Unnamed Tributary on the Site discharges to Clover Creek, then to Cow Creek, a tributary to the Sacramento River. Clover Creek and downstream waters are all navigable waters of the United States.
15. The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Resources Control Board. Clover Creek is a tributary of Cow Creek and hence the Sacramento River. Existing and potential beneficial uses for Cow Creek include the following: Municipal & Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Power (POW); Water Contact (REC-1) & Other Non-contact Recreation (REC-2); Cold (COLD) Freshwater Habitat; Migration of Cold Freshwater Aquatic Organisms (MIGR); Spawning of Warm & Cold Freshwater Aquatic Organisms (SPWN); and Wildlife Habitat (WILD). Beneficial uses of any specifically identified water body generally apply to all of its tributaries.

STORM WATER DISCHARGE VOLUME ESTIMATES

16. Staff used a highly conservative method to estimate that 754,901 gallons of sediment-laden storm water was discharged to the Unnamed Tributary as a result of onsite grading activities. The following discussion, detailed further in Attachment B, Storm Water Runoff Calculations, summarizes how discharge volume estimates were determined.

Using the USDA Natural Resources Conservation Service - Conservation Engineering Division Technical Release 55 Method (USDA TR-55 Method) and based on characteristics of the site (Newly graded area with no vegetation, Hydrologic Soil Group D) Staff calculated that precipitation events greater than 0.13 inches of rainfall over 24 hours would generate runoff from the Site.

As outlined in Paragraphs 10 and 12 above, on 21 November 2014 staff observed and documented storm water discharges to the Unnamed Tributary following a 24 hour precipitation event that generated 0.38 inches of rainfall. Although Staff

believes 0.13 inches of rainfall would generate storm water runoff as the preliminary calculations suggest, actual observations by Staff during the 21 November 2014 inspection validated that at the very least 0.38 inches of rainfall in a 24 hour period generates storm water runoff given site specific characteristics. Therefore, although highly conservative, 0.38 inches of rainfall in a 24 hour period was used for the purposes of identifying storm water discharge events at this Site. Photographic evidence of this runoff is provided in the Inspection Report, included as Attachment C to this Complaint.

Precipitation data was obtained from a Department of Water Resources/Flood Management gauging station (WHT CalFire Station; Latitude 40.6194; Longitude - 121.8994) located approximately 5.8 miles west of the Site for the period 30 May 2014 through February 2015. During this period rainfall exceeded 0.38 inches during a 24 hour period on twenty (20) days.

Table 1 below summarizes qualifying storm events, calculated gallons of runoff generated, and volume subject to penalties.

Table 1: Storm Events and Generated Runoff Subject to Penalties.

Discharge Event	Date	Total Precipitation			
		Total Precipitation 24-Hour Event (inches)	Total Runoff Volume (gallons)	Total Volume Subject to Penalties (Volume - 1000 gallons)	Days of Violation Subject to Penalties
#1	25-Sep-2014	1.42	52,617	51,617	1
#2	20-Oct-2014	0.87	24,277	23,277	1
#3	23-Oct-2014	0.54	9,843	8,843	1
#4	25-Oct-2014	1.11	36,217	35,217	1
#5	31-Oct-2014	1.25	43,516	42,516	1
#6	19-Nov-2014	0.41	5,267	4,267	1
#7	20-Nov-2014	0.38	4,349	3,349	1
#8	21-Nov-2014	0.45	6,579	5,579	1
#9	29-Nov-2014	1.02	31,642	30,642	1
#10	30-Nov-2014	0.56	10,619	9,619	1
#11	3-Dec-2014	2.63	121,267	120,267	1
#12	5-Dec-2014	0.75	18,687	17,687	1
#13	6-Dec-2014	0.58	11,411	10,411	1
#14	10-Dec-2014	1.87	77,561	76,561	1
#15	11-Dec-2014	3.43	168,324	167,324	1
#16	12-Dec-2014	0.55	10,229	9,229	1
#17	15-Dec-2014	0.69	16,020	15,020	1
#18	19-Dec-2014	0.72	17,341	16,341	1
#19	2-Feb-2015	0.57	11,013	10,013	1

#20	6-Feb-2015	1.88	78,125	77,125	1
Total Discharge Volume			754,901		20
Total Subject to Penalties				734,901	

For the purposes of calculating runoff volume, Staff used a discharge volume of 754,901 gallons (of this amount, 734,901 gallons are subject to penalties as described below in section 23).

VIOLATION 1 – DISCHARGE OF STORM WATER CONTAINING POLLUTANTS TO UNNAMED TRIBUTARY TO CLOVER CREEK

17. **Violation 1:** The Discharger is alleged to have violated section 301 of the Clean Water Act, Water Code section 13376, and Basin Plan prohibitions as detailed below by discharging at least 754,901 gallons of sediment laden storm water without obtaining coverage under the General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 99-08-DWQ over a period of twenty (20) days during the qualifying storm events that occurred between 30 May 2014 and 6 February 2015.
18. **Clean Water Act Violations:** The Clean Water Act prohibits certain discharges of storm water containing pollutants except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. Discharges to surface waters comprised of storm water associated with construction activity, including clearing, grading, excavation, and other land disturbance activities (except operations that result in disturbance of less than one acre of total land area and which are not part of a larger common plan of development or sale), are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities, NPDES No. CAS000002, Order No. 99-08-DWQ (General Permit). Section 301 of the Clean Water Act prohibits the discharge of pollutants except as in compliance with the applicable General Permit or Section 404 permit. The discharger graded/excavated more than 2 acres of land without obtaining coverage under the General Permit, and has discharged sediment-laden storm water to the Unnamed Tributary.
19. **Water Code Violations:** Water Code section 13376 requires any person discharging pollutants or proposing to discharge pollutants into waters of the United States to file a report of waste discharge. The Discharger violated Water Code section 13376 by discharging sediment from disturbed land surfaces into waters of the United States without first filing a report of waste discharge or obtaining coverage under the General Permit.
20. **The Basin Plan Violations:** The Basin Plan prohibits the discharge of sediment and settleable material into surface waters in a manner that causes nuisance or adversely affects beneficial uses as defined by Water Code section 13050. (Basin Plan, p. III-7.00.) The Basin Plan also prohibits the discharge of materials resulting in changes in turbidity that cause nuisance or adversely affect beneficial uses. (*Id.* at p. III-9.00.) The Discharger violated these Basin Plan prohibitions by discharging sediment from disturbed land

surfaces resulting in changes in turbidity in excess those stipulated by water quality objectives.

21. **Responsible Parties:** The Discharger, as the property owner, is liable for storm water discharge violations. The sediment-laden storm water discharged into the Unnamed Tributary was the result of unauthorized grading activities conducted to prepare the Site for marijuana cultivation. The lessee sought and obtained permission from the Discharger to grow crops on the Site. Discharger is liable as the owner of the Site and the person who had the legal ability and opportunity to control and prevent the activities that resulted in the storm water discharge.

VIOLATION 2 – PLACEMENT OF FILL MATERIALS IN THE UNNAMED TRIBUTARY

22. **Violation 2:** The Discharger is alleged to have violated section 301 of the Clean Water Act, and Basin Plan prohibitions as detailed below by discharging fill material directly to the Unnamed Tributary.
23. **Clean Water Act Violations:** Under Clean Water Act section 301, the discharge of dredged and/or fill material into waters of the United States is unlawful unless specifically permitted by Clean Water Act sections 404 and 401. Clean Water Act section 404 requires any person proposing to discharge dredge or fill material into navigable waters of the United States to obtain a Section 404 permit prior to such discharge. Section 401 of the Clean Water Act requires that any person obtaining a Section 404 permit must obtain certification from the State, in this case through the Central Valley Water Board, that the proposed discharge will not violate applicable water quality objectives. The Discharger has discharged fill directly to the Unnamed Tributary without obtaining the necessary permits and certification from authorizing agencies in violation of the Clean Water Act.
24. **The Basin Plan Violations:** The Basin Plan prohibits the discharge of sediment and settleable material into surface waters in a manner that causes nuisance or adversely affects beneficial uses as defined by Water Code section 13050. (Basin Plan, p. III-7.00.) The Basin Plan also prohibits the discharge of materials resulting in changes in turbidity that cause nuisance or adversely affect beneficial uses. (*Id.* at p. III-9.00.) The Discharger violated these Basin Plan prohibitions by discharging fill material into waters of the United States effectively diverting and re-routing the watercourse via construction of an earthen berm.

Responsible Parties: Discharger as the owner of the Site is ultimately responsible for the conditions of the Site and the grading activities that occurred on the property. While the Discharger has asserted that he leased the property for some undisclosed period of time and that it was the lessee who conducted the development activities on the Site, the Discharger has not been willing to provide the name of that party or any information concerning the terms of that lease. Discharger was aware that the tenant intended to develop the Site for some type of farming and had the legal ability to prevent the discharge. Accordingly, liability for the unauthorized discharges that occurred as a result of the lessee's activity can be imposed on the Discharger.

ADMINISTRATIVE CIVIL LIABILITY PROVISIONS

25. Water Code section 13350 states, in relevant part:

(a) A person who (1) violates a cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of a waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state . . . shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e). . . .

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not on both. (1) The civil liability on a daily basis shall not exceed five thousand dollars (\$5,000) for each day the violation occurs. . . (2) The civil liability on a per gallon basis shall not exceed ten dollars (\$10) for each gallon of waste discharged.

In the alternative:

26. Water Code section 13385 states, in relevant part:

(a) A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376. . .

(4) An order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended. . .

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) . . . At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

The violations alleged herein are subject to liability in accordance with Water Code section 13350 and Water Code section 13385 and the Central Valley Water Board in its discretion could elect to impose liability under either code section. Staff is recommending the proposed liability, as discussed in greater detail below, be imposed in accordance with Water Code section 13385.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13385 FOR VIOLATION 1

27. **Maximum Civil Liability for Discharge of Storm Water to Surface Waters:** Per Water Code section 13385 civil liability administratively imposed by the Central Valley Water Board shall not exceed \$10,000 per violation per day per violation, plus \$10 per gallon for each gallon of waste discharged but not cleaned up over 1,000 gallons. Staff conservatively estimated as outlined in section 15 that in the period from September 2014 through February 2015 a total of 754,901 gallons of turbid water was discharged to surface waters over twenty (20) days. Of the 467,536 gallons that were discharged, a total of 734,901 gallons were discharged in excess of 1,000 gallons per discharge event. Therefore, at \$10 per gallon in excess of 1,000 gallons, and at \$10,000 per day for each day of the twenty (20) days of discharge, the maximum administrative civil liability that may be assessed pursuant to section 13385 is **seven million, five hundred forty-nine thousand, and ten dollars (\$7,549,010).**
28. **Minimum Civil Liability for Discharge of Storm Water to Surface Waters:** Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The discharge violations associated with the work conducted at the Site were due to a failure to obtain and comply with the General Permit, including the failure to install and implement appropriate erosion and sediment control. Using the US EPA's BEN model and highly conservative calculations for total delayed and avoided costs, the economic benefit gained by non-compliance is calculated to be approximately **\$6,202** which becomes the minimum civil liability which must be assessed pursuant to section 13385. In addition, the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violations. Accordingly, the minimum liability that the Central Valley Water Board should impose for Violation 1 in accordance with the Enforcement Policy is **six thousand, eight hundred and twenty-two dollars (\$6,822).**

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13385 FOR VIOLATION 2

29. **Maximum Civil Liability for Discharge of Fill to Surface Waters:** Per Water Code section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day per violation, plus \$10 per gallon for each gallon of waste discharged but not cleaned up over 1,000 gallons. The Discharger and/or a third party with Discharger's consent discharged approximately 427 cubic yards of fill material into waters of the United States on the Site during construction of an earthen berm. Each cubic yard of fill is equal to approximately 202 gallons. Accordingly, Staff conservatively estimates the discharge volume of 86,242 gallons (of this amount, 85,242 gallons are subject to penalties as described below). The discharge of the fill material to the streambed could possibly have occurred in a single day, therefore, at \$10 per gallon for discharges in excess of 1,000 gallons, and at \$10,000 for one day of

discharge, the maximum administrative civil liability that may be assessed pursuant to section 13385 is **eight hundred sixty-two thousand, four hundred and twenty dollars (\$862,420)**.

30. **Minimum Civil Liability for Discharge of Fill to Surface Waters:** Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The economic benefit associated with Violation 2 resulted from the unauthorized placement of fill without obtaining a Clean Water Act Section 404, Dredge and Fill Permit, and 401 Water Quality Certification. Delayed and avoided costs associated with obtaining and complying with the necessary authorizations is estimated at \$3,335. Using the US EPA's BEN model and highly conservative calculations for total delayed and avoided costs, the economic benefit gained by non-compliance associated with Violation 2 is calculated to be approximately **\$1,876**, which becomes the minimum civil liability which must be assessed pursuant to section 13385. In addition, the Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violations. Accordingly, the minimum liability that the Central Valley Water Board should impose for Violation 2 in accordance with the Enforcement Policy is **two thousand, and sixty-four dollars (\$2,064)**.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

31. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability imposed under section 13385, subdivision (c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
32. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385(e). The entire Enforcement Policy can be found at:
- http://www.swrcb.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
33. This administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, as explained in detail in Attachment A to this Complaint. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

34. As described above, the maximum penalty that can be imposed against the Discharger(s) for the combined violations is **\$8,411,430** and the minimum penalty in accordance with the Enforcement Policy that would recover the economic benefit amount plus 10% for the combined violations is **\$8,886**. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger(s) ability to pay, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Dischargers in the amount of **\$201,400**. The specific factors considered in this penalty are detailed in Attachment A of this Complaint.
35. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger(s) waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
36. Issuance of this Administrative Civil Liability Complaint to enforce Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

BRENT ALAN VANDERKAM IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **two hundred and one thousand, and four hundred dollars (\$201,400)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code sections 13327 and 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **4 and 5 June 2015**, unless one of the following occurs by **8 April 2015**:
 - a) The Discharger waives the hearing by completing the attached form (checking the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **two hundred and one thousand, and four hundred dollars (\$201,400)**; or
 - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of

enforcement (including legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

CLINT E. SNYDER, Assistant Executive Officer

Date

Attachment A: Penalty Calculations
Attachment B: Storm Water Runoff Calculations
Attachment C: Inspection Report

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Brent Alan Vanderkam (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2015-0522 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **two hundred and one thousand, and four hundred dollars (\$201,400)** by check that references "ACL Complaint R5-2015-0522" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **8 April 2015**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)